

15 Procedure: Arrests

Under A138(1), an officer has the authority and powers of a peace officer to enforce the Act, including the arrest, detention or removal from Canada of any person. The power to arrest and detain is a serious matter that results in a person being deprived of their liberty under section 7 of the *Canadian Charter of Rights and Freedoms*. Accordingly, arrests must be made with reasonable cause. Detention should only be an option when officers have explored other alternatives and have found them to be inappropriate.

15.1 Officer responsibilities for arrests under the *Criminal Code*

When an officer arrests someone, the officer is individually responsible for observing the following procedures outlined in section 29 of the *Criminal Code*:

29.(1) It is the duty of every one who executes a process or warrant to have it with him, where it is feasible to do so, and to produce it when requested to do so.

(2) It is the duty of every one who arrests a person, whether with or without a warrant, to give notice to that person, where it is feasible to do so, of

- (a) the process or warrant under which he makes the arrest; or
- (b) the reason for the arrest.

(3) Failure to comply with subsections (1) or (2) does not of itself deprive a person who executes a process or warrant, or a person who makes an arrest, or those who assist them, of protection from criminal responsibility.

Although subsection 29(3) of the *Criminal Code* protects an officer in instances of non-compliance with subsections 29(1) (2), the Agency expects an officer to comply with subsections 29(1) and (2) whenever possible.

15.2 False arrest

Subsection 28(1) of the *Criminal Code* provides that a person is protected from criminal responsibility in the arrest of a wrong person if the officer:

- is authorized to execute the warrant to arrest;
- believes, in good faith and on reasonable grounds, that the person they arrest is the person named on the warrant.

Subsection 28(2) further clarifies that:

28.(2) Where a person is authorized to execute a warrant to arrest,

(a) every one who, being called on to assist him, believes that the person in whose arrest he is called on to assist is the person named in the warrant, and

(b) every keeper of a prison who is required to receive and detain a person who he believes has been arrested under the warrant,

is protected from criminal responsibility in respect thereof to the same extent as if that person were the person named in the warrant.

Subsection 37(1) of the *Criminal Code* states:

37.(1) Everyone is justified in using force to defend himself or anyone under his protection from assault, if he uses no more force than is necessary to prevent the assault or the repetition of it.

In other words, officers must have reasonable grounds to justify any use of force when performing their duties, and they should keep force to a minimum. As long as officers are able to justify their actions in accordance with the provisions of the *Criminal Code*, these actions will be supported.

While the *Criminal Code* confers protection from criminal charges should false arrest occur, an officer may nevertheless be open to civil suit. An officer must take every possible precaution to prevent such an occurrence.

15.3 Arrests with a warrant

Under A55(1), an officer may issue a warrant for the arrest and detention of a permanent resident, protected person or a foreign national who the officer has reasonable grounds to believe (see definition of "reasonable grounds to believe" in section 6), is:

- inadmissible under any provision of the Act and either:
 - poses a danger to the public (see ENF 20, section 5.6); or
 - is unlikely to appear (see ENF 20, section 5.7) for an examination, an admissibility hearing, a removal from Canada or at a proceeding that could lead to the making of a removal order by the Minister under subsection 44(2).

If these grounds and reasons exist, an officer may issue a warrant for the arrest and detention of a foreign national or permanent resident by completing the BSF 499.

Warrants for arrest and the Port of Entry

When a warrant for arrest has been issued at the Port of Entry by following the warrant issuance procedures in the sections below, the appropriate Inland Enforcement office must be notified immediately of the issuance of the warrant and the circumstances of the case. In addition, the file must be transferred to regional Inland Enforcement as soon as possible to ensure the subsequent investigation of the case and management of the warrant.

In cases where a warrant for arrest is issued in conjunction with an Order to Deliver (A59), the warrant will continue to be managed by the Port of Entry where required and no notification or transfer to Inland Enforcement is necessary.

Should there be any outstanding issues with the warrant, Inland Enforcement staff will discuss the case with the issuing POE office to gather information and to determine a suitable course of action. Furthermore, should the issuing POE office receive relevant information pertaining to the wanted person, such as information that may lead to the execution or cancellation of the warrant, the information should be promptly forwarded to the appropriate Inland Enforcement for assessment.

In circumstances where a wanted person is seeking admission to Canada at a POE and a Border Services Officer updates the status of the warrant, all attempts should be made to

notify the Inland Enforcement office that holds the file without delay. This will allow the Inland Enforcement office to update the file and adjust its investigative resources

Diligence in issuing warrants

The appropriate diligence must be taken and demonstrated prior to the issuance of a Warrant for Arrest. The *Immigration Warrant Checklist BSF 268* must be approved by the responsible supervisor or manager prior to the issuance of every warrant. The checklist contains all relevant information including:

- client details
- case particulars and priority ranking
- last known address
- system queries and input

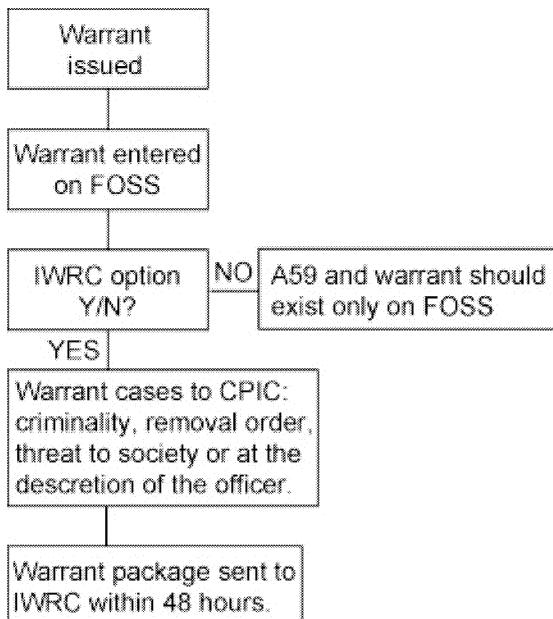
While respecting an officer's delegated authority, the CBSA is also demonstrating that a standardized approach is being taken prior to warrants being issued against individuals where there are reasonable grounds to believe they are inadmissible to Canada. The checklist also serves as a quick reference point on file for key information regarding the case/individual.

The warrant diligence checklist can be found at

For warrants issued prior to June 28, 2002 for SIO determinations:

The transitional provisions of IRPA [R325] provide that a warrant for arrest and detention made under the *Immigration Act, 1976* is a warrant for arrest and detention under IRPA. All warrants, including those for SIO determination, that were issued under the *Immigration Act, 1976* should be executed for the reason of that warrant.

Warrant flow chart



15.4 Completing Form BSF 499 (Warrant for Arrest)

When a Warrant for Arrest BSF 499 is issued, it must be completed on the nationally approved bilingual form that conforms to the legally approved format and text. The following procedures must be followed to accurately complete the manual BSF 499 warrant for arrest:

- the FOSS identification number must appear outside the legal text;
- print the family name and given name of the individual as it appears on FOSS/NCMS "Warrant for Arrest" screen. If FOSS has truncated the individual's name because of length, print the individual's complete family name and given name;
- do not enter aliases, file numbers, identity numbers, birth date or other information in this field. Aliases must be entered in FOSS on the "Personal Details" screen. The WRC will transfer aliases from the FOSS "Personal Details" screen onto the CPIC database;
- check-off the option box on the BSF 499 indicating the reason for the warrant;
- the authorized officer's signature should appear in the signature block; and
- the authorized officer's title as delegated in the Instruments must be clearly recorded on the face of the IMM 0420B (BSF 499).

If a mistake is made while completing the IMM 0420B (BSF 499), officers should draw a line through the error, initial and date it. Officers should not use correction fluid.

15.5 Entering warrants into FOSS

The Warrant Response Centre (the WRC) relies on information on the FOSS "Warrant for Arrest" screen to make entries into the CPIC database. It is essential for officers to complete FOSS information fields correctly. Officers must also make use of the remarks section to detail reasons for warrant issuance and to detail other relevant information. The information entered in FOSS must appear in either English or French. CPIC policy prohibits information on a single entry to be a combination of both official languages. The fact that a warrant has been issued should also be input into NCMS.

There are 3 sections on the "Warrant for Arrest" screen in FOSS:

Warrant entry:

This section must be completed by the officer at the same time the warrant is issued.

- this section captures information about the individual and the warrant issued. Experience has shown that details about the individual's physical appearance (e.g., height, weight, scars, tattoos) can be crucial for enforcement officers to properly identify the individual at the time of the arrest;
- the "Personal Details" screen is used to enter aliases;
- the Associations or Characteristics (AOC) screen is used to record information (either: known, suspected or possible) with respect to membership in criminal or terrorist organizations or groups having been identified with crimes against humanity. See the FOSS Coding Manual – Warrant for Arrest – AOC;
- the "Convictions" screen is used to enter known convictions, either in Canada or abroad. Officers should use the remark screen to provide details of convictions and equivalencies of foreign convictions;
- if the warrant is to be entered into the CPIC database, the information field "WRC" must be marked "Y" (YES). See instructions in Sec 15.6 with respect to transferring warrants to the CPIC database.

File transfer:

The WRC will return the cancelled or executed warrant to the office where the individual's file has been transferred (if on or after the date of its cancellation/execution). If this

section is blank, the WRC will return the original warrant to the office that put the warrant into action.

Final warrant action:

This section is to be completed by the officer when the warrant is executed or cancelled (see ENF 13, section 7.7).

Note: *It is recommended that files be reviewed before entering immigration warrant data on FOSS/NCMS. When it is discovered that warrant information is incorrect and requires amendments to any of the physical descriptors of the person or changes to the tombstone data, refer to ENF 13, section 7.7.*

15.6 Transferring warrants onto the CPIC database

To ensure the integrity of the data being transferred to the CPIC database, the WRC inputs and monitors the information contained in immigration warrant records being transferred to the CPIC database. Warrant packages must be sent to the WRC. For information when a warrant should be entered onto the CPIC database, officers should refer to ENF 13, section 5.4.

If a warrant is to be entered onto the CPIC database, the "WRC Y/N" field of the FOSS screen must be filled with a "Y." This informs the WRC that the warrant is destined to the CPIC database and enables the transfer to take place once the mandatory documentation is received and verified at the WRC. If "N" is selected, the warrant is not transferred to the CPIC database.

Note: *When the WRC field has been left blank, the default is "Y."*

When A55(1) warrants are issued in combination with a notice to deliver an inmate A59 these subjects are currently serving a sentence in an institution and their whereabouts are known to the officer issuing the warrant. Since officers are not actively looking for these individuals, it is vital that the officer entering the warrant onto FOSS ensures that an "N" is entered in the WRC field. This ensures that these warrants are not misdirected to CPIC and will avoid jurisdictional conflicts with any other laws of Canada. In exceptional cases, when there is a need to activate a warrant for the purposes of A59, officers may notify CPIC by entering "Y" in the WRC field and sending the original documentation to the WRC.

If an existing warrant is to be transferred to the CPIC database, the "N" in the WRC field must be changed to "Y" to enable the transfer to take place. This can be done via the FOSS maintenance function.

15.7 Sending warrant packages to the WRC

In addition to the original immigration warrant, the mandatory documentation is the essential data required by the WRC before a warrant can be transferred to the CPIC database. A listing of this documentation can be found at

When completing a
warrant package, accuracy of information is paramount.

All warrant packages must be forwarded to the WRC within 48 hours through a secure, timely and reliable courier or mail service. It should be noted that the majority of warrant package information is designated as Protected "B." Some information may also be classified as Secret. This information must be appropriately safeguarded.

Warrant packages are to be mailed to:

Warrant Response Centre
Canada Border Services Agency

The external envelope should be devoid of all markings other than the WRC address and must bear a return address and a telephone number. Government standards for the shipping of classified information must be followed.

Courier or mail services must provide proof of mailing and, on request, record of transit/delivery for any items delivered via their service.

proof of mailing and records of transit/delivery should be requested for all items. Further, it is imperative to trace documentation lost en route to the WRC immediately.

15.8 Executing or cancelling an immigration warrant

For information regarding the **standardized warrant cancellation policy**, please refer to ENF 13, Section 5.6. The standardized warrant cancellation policy coincides with the general cancellation policy of when the reasons for arrest no longer exist.

Once an officer has confirmed with the WRC the validity and identity of the person subject to the warrant, they may execute the warrant if the officer is satisfied that the person is described in the warrant or cancel the warrant if the warrant does not have any validity. When a warrant has been executed or cancelled, the appropriate action should be input into NCMS.

Section 3 of the Warrant FOSS screen is the final warrant action that must be completed by the officer when the warrant is executed or cancelled. To cancel or execute a warrant, officers should follow these steps:

- from the Main Menu, go to the Full Document Entry screen in FOSS (FD);
- enter the FOSS-generated warrant document number in the existing document field (ED) in the identify document field;
- complete section 3 of the Warrant Screen and add any remarks.

Note: After a warrant has been executed and the person is arrested under A55(1), a Notice of Arrest must be completed either manually [IMM 1285B] or through FOSS using the Full Document Entry (FD) screen. The action should also be recorded in NCMS.

The existence of a warrant does not permit any discretion on arresting a person named in a warrant. An officer must arrest and detain the person unless the grounds for the warrant have ceased to exist, such as a loss of jurisdiction or change in circumstances. A warrant can be cancelled in situations where the person is no longer deemed to be inadmissible and unlikely to appear for an examination, an admissibility hearing, for removal or at a proceeding that could lead to the making of a removal order by the Minister under subsection 44(2); and / or to pose a danger to the public. In those cases where the grounds for the warrant have ceased to exist, the officers must seek to have the warrant cancelled from the CPIC database.

When an immigration warrant becomes invalid, it must be immediately removed from the CPIC database using the FOSS FD module. This action removes the warrant from the CPIC database but retains the warrant information on FOSS/NCMS; therefore it is important that the warrant be cancelled in FOSS/NCMS as well. The WRC will forward the warrant file together with a document transit and receipt form stamped with the cancellation date to the CBSA office conducting the action.

Whenever a warrant is cancelled for a principal applicant, the same must be done for any family members included in the application, as long as criminality or individual inadmissibility is not involved. When a case is decided favourably, the responsibility for cancelling the warrant is on the officer.

Note: Officers must exercise caution when merging client IDs when an active warrant exists. The client ID in which the active warrant is associated must continue to exist.

15.9. Referral of warrant cases from the CPC Vegreville

Warrants should be executed pursuant to A55(1) where there remains reasonable grounds to believe the person is inadmissible and unlikely to appear for examination, an admissibility hearing, removal from Canada or at a proceeding that could lead to the making of a removal order by the Minister under subsection 44(2); and/or they pose a danger to the public. In all CPC Vegreville cases, whether the person is a permanent resident or a foreign national, for whom there is an outstanding warrant, the CPC Vegreville **must** refer the case to an inland CBSA office **immediately** to make a decision on the case. For further information on referral of warrant cases from the CPC Vegreville, refer to the matrix in section 7.3 above.

15.10 Arrests without a warrant

Before an officer makes an arrest without a warrant under A55(2), they must:

- have reasonable grounds to believe (see definition of "reasonable grounds to believe" in section 6) that a foreign national (other than a protected person, see A95(2)) is:
 - inadmissible (see ENF 1) under any provision of the Act and is either a danger to the public (see ENF 20, section 5.6) or unlikely to appear (see ENF 20, section 5.7) at for an examination, an admissibility hearing, removal from Canada or at a proceeding that could lead to the making of a removal order by the Minister, pursuant to A44(2); or
- not be satisfied of the identity (see ENF 20, section 5.8) of a foreign national in the course of any procedure under the Act.

It is important to note that under A55(2) permanent residents and protected persons may not be arrested without a warrant. When officers arrest without a warrant under A55(2), a Notice of Arrest must be completed either manually [IMM 1285B] or through FOSS using the Full Document Entry (FDE) screen. The action should also be recorded in NCMS.

15.11 Arrest of a person named in a security certificate (with or without a warrant)

An officer may be contacted by CIC Case Management Branch in coordination with the CBSA Enforcement Branch to arrest and detain a permanent resident or a foreign national who has been named in an A77(1)security certificate.

Under A81, the Minister of Citizenship, Immigration and Multiculturalism and the Minister of Public Safety may issue a warrant for the arrest and detention of a person who is named in a security certificate if they have reasonable grounds to believe that the person is a danger to national security, to any person or is unlikely to appear for a proceeding or removal.

The following are procedures that should assist officers in executing the arrest of a person named in a security certificate:

- the warrant is signed by the Minister of Public Safety and the Minister of Citizenship, Immigration and Multiculturalism;
- the CIC Case Management Branch, with the cooperation of the CBSA Enforcement Branch, will coordinate with the appropriate regional enforcement team for the arrest and detention of the permanent resident or foreign national named in the security certificate;
- the officer will receive a copy of the warrant for the arrest and security certificate;
- at the time of arrest, the person must be provided with the warrant and a copy of the security certificate. The person must be informed of the reason for their arrest, given their Notice of Rights under the *Vienna Convention* and their right to counsel using form IMM 0689B;
- after the arrest, the regional enforcement team must advise the CIC Case Management Branch and the CBSA Enforcement Branch of the arrest and detention, input the Notice of Arrest (NOA) into FOSS/NCMS; and
- CIC Case Management Branch in cooperation with the CBSA Enforcement Branch will be responsible for all other information that will be input into FOSS/NCMS.

15.12 Arrest of minors

Officers must exercise caution if minors, under the age of 18, have been or will be arrested or detained under the Act. Regardless of the age of the person arrested, a Notice of Arrest is required for all arrests under A55(1) and (2). For further information on the arrest or detention of minors, refer to ENF 20, section 5.10.